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 13 *United States of America*

14 UNITED STATES DISTRICT COURT
 15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 CITY OF COLTON, a California
 18 municipal corporation,

19 Plaintiff,

20 v.

21 AMERICAN PROMOTIONAL
 EVENTS, INC., et al.,

22 Defendants.

23 PYRO SPECTACULARS, INC., a
 24 California corporation,

25 Third-Party Plaintiff

26 v.

27 BROCO, INC., et al.,

28 Third-Party Defendants.

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 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

Case No. ED CV 09-01864 PSG (SSx)

**THIRD-PARTY DEFENDANT
 UNITED STATES OF AMERICA'S
 ANSWER TO PYRO
 SPECTACULARS, INC.'S THIRD-
 PARTY COMPLAINT;
 COUNTERCLAIMS**

1 UNITED STATES OF AMERICA,
2 Counter-Plaintiff,
3 v.
4 PYRO SPECTACULARS, INC.,
5 Counter-Defendant.
6

7
8 Third-Party Defendant United States of America ("United States") hereby
9 asserts its defenses and responses to the Third-Party Complaint brought by
10 Defendant and Third-Party Plaintiff Pyro Spectaculars, Inc. ("PSI") in the above-
11 captioned matter. The numbered paragraphs in this Answer correspond to the
12 numbered paragraphs in the Third-Party Complaint.

13 **JURISDICTION AND VENUE**

14 1. The allegations in Paragraph 1 of the Third-Party Complaint are
15 conclusions of law that require no response. To the extent any of these could be
16 deemed allegations of fact against the United States, the United States denies those
17 allegations.

18 2. The allegations in Paragraph 2 of the Third-Party Complaint are
19 conclusions of law that require no response. To the extent any of these could be
20 deemed allegations of fact against the United States, the United States denies those
21 allegations.

22 3. The allegations in Paragraph 3 of the Third-Party Complaint are
23 conclusions of law that require no response. To the extent any of these could be
24 deemed allegations of fact against the United States, the United States denies those
25 allegations.

26 4. The allegations in Paragraph 4 of the Third-Party Complaint are
27 conclusions of law that require no response. To the extent any of these could be
28 deemed allegations of fact against the United States, the United States denies those

1 allegations.

2 **THE PARTIES**

3 5. The United States is informed and believes that PSI is a corporation
4 organized under California law. Except as expressly admitted, the United States
5 lacks sufficient knowledge or information to form a belief as to the truth of the
6 allegations in Paragraph 5 of the Third-Party Complaint, and therefore denies those
7 allegations.

8 6. The United States lacks sufficient knowledge or information to form a
9 belief as to the truth of the allegations in Paragraph 6 of the Third-Party Complaint,
10 and therefore denies the allegations.

11 7. The allegations in Paragraph 7 of the Third-Party Complaint are legal
12 conclusions to which no response is required. To the extent any of these allegations
13 could be deemed allegations of fact against the United States, the United States
14 lacks sufficient knowledge or belief as to their truth, and on that basis denies them.

15 8. The United States admits that the United States Department of Defense
16 ("DoD"), formerly known as the Department of War, is, and at relevant times was,
17 an executive branch agency of the United States Government, and that the DoD is
18 headed by the Secretary of Defense and that the United States Army, Navy, and Air
19 Force are military Departments within DoD, and that the United States Marine
20 Corps is a military component within the Navy. The United States admits that the
21 United States Coast Guard is a military service and a branch of the armed forces of
22 the United States at all times and a service in the Department of Homeland
23 Security, except when operating as a service in the Navy. The remaining
24 allegations in Paragraph 8 of the Third-Party Complaint constitute conclusions of
25 law and characterize PSI's claims against the United States, and therefore no
26 response is required; to the extent any of these allegations could be deemed
27 allegations of fact against the United States, the United States denies those
28 allegations.

1 9. The United States admits that the United States owned the Rialto
2 Ammunition Storage Point ("RASP") from approximately 1942 to July 9, 1946 and
3 that bunkers were at the RASP. Except as expressly admitted, the United States
4 denies the remaining allegations in Paragraph 9 of the Third-Party Complaint.

5 10. The United States admits the allegation concerning TCE and
6 perchlorate detection in sentence 5 of Paragraph 10 of the Third-Party Complaint,
7 but denies the remaining allegations in this paragraph.

8 11. The allegations in Paragraph 11 of the Third-Party Complaint are
9 conclusions of law that require no response. To the extent any of these could be
10 deemed allegations of fact against the United States, the United States denies those
11 allegations.

12 12. The allegations in Paragraph 12 of the Third-Party Complaint are
13 conclusions of law that require no response. To the extent any of these could be
14 deemed allegations of fact against the United States, the United States denies those
15 allegations.

16 13. The United States is informed and believes that Third-Party Defendant
17 City of Rialto is a municipal corporation organized and existing under the laws of
18 the State of California and located in San Bernardino, California. Except as
19 expressly admitted, the United States lacks sufficient knowledge or information to
20 form a belief as to the truth of the allegations in Paragraph 13 of the Third-Party
21 Complaint, and therefore denies those allegations.

22 14. The United States is informed and believes that Third-Party Defendant
23 Rialto Utility Authority is a joint powers authority organized and existing under the
24 laws of the State of California. Except as expressly admitted, the United States
25 lacks sufficient knowledge or information to form a belief as to the truth of the
26 allegations in Paragraph 14 of the Third-Party Complaint, and therefore denies
27 those allegations.

28 15. The United States is informed and believes that Third-Party Defendant

1 General Dynamics Corporation is and at relevant times was a Delaware
2 corporation. The United States is informed and believes that Raytheon Corporation
3 is and at relevant times was a Delaware corporation. Except as expressly admitted,
4 the United States lacks sufficient knowledge or information to form a belief as to
5 the truth of the allegations in Paragraph 15 of the Third-Party Complaint, and
6 therefore denies those allegations.

7 16. The United States is informed and believes that Third-Party
8 Defendants Zambelli Fireworks Company, a/k/a Zambelli Fireworks Internationale
9 and Zambelli Fireworks Manufacturing Company, Inc., are and at relevant times
10 were Pennsylvania corporations. Except as expressly admitted, the United States
11 lacks sufficient knowledge or information to form a belief as to the truth of the
12 allegations in Paragraph 16 of the Third-Party Complaint, and therefore denies
13 those allegations.

14 17. The United States lacks sufficient knowledge or information to form a
15 belief as to the truth of the allegations in Paragraph 17 of the Third-Party
16 Complaint, and therefore denies those allegations.

17 18. The United States is informed and believes that Third-Party Defendant
18 Environmental Enterprises, Inc. is an Ohio corporation. Except as expressly
19 admitted, the United States lacks sufficient knowledge or information to form a
20 belief as to the truth of the allegations in Paragraph 18 of the Third-Party
21 Complaint, and therefore denies those allegations.

22 **FIRST CLAIM FOR RELIEF**

23 19. The United States incorporates by reference its responses to
24 Paragraphs 1 through 18 above.

25 20. The allegations in Paragraph 20 of the Third-Party Complaint consist
26 of conclusions of law to which no response is required. To the extent any of these
27 allegations could be deemed allegations of fact against the United States, the United
28 States denies those allegations.

1 21. The allegations in Paragraph 21 of the Third-Party Complaint consist
2 of conclusions of law to which no response is required. To the extent any of these
3 allegations could be deemed allegations of fact against the United States, the United
4 States denies those allegations.

5 22. The allegations in Paragraph 22 of the Third-Party Complaint consist
6 of conclusions of law to which no response is required. To the extent any of these
7 allegations could be deemed allegations of fact against the United States, the United
8 States denies those allegations.

9 23. The allegations in Paragraph 23 of the Third-Party Complaint consist
10 of conclusions of law to which no response is required. To the extent any of these
11 allegations could be deemed allegations of fact against the United States, the United
12 States denies those allegations.

13 24. The allegations in Paragraph 24 of the Third-Party Complaint consist
14 of conclusions of law to which no response is required. To the extent any of these
15 allegations could be deemed allegations of fact against the United States, the United
16 States denies those allegations.

17 25. The allegations in Paragraph 25 of the Third-Party Complaint consist
18 conclusions of law to which no response is required. To the extent any of these
19 allegations could be deemed allegations of fact against the United States, the United
20 States denies those allegations. In addition, the United States lacks sufficient
21 information or knowledge to form a belief as to the truth of the allegations
22 concerning PSI's alleged costs, and on that basis denies them.

23 26. The allegations in Paragraph 26 of the Third-Party Complaint consist
24 of conclusions of law to which no response is required. To the extent any of these
25 allegations could be deemed allegations of fact against the United States, the United
26 States denies those allegations.

27 27. The allegations in Paragraph 27 of the Third-Party Complaint consist
28 of conclusions of law to which no response is required. To the extent any of these

1 allegations could be deemed allegations of fact against the United States, the United
2 States denies those allegations.

3 28. The allegations in Paragraph 28 of the Third-Party Complain purport
4 to characterize actions by PSI in providing copies of its complaint, to which no
5 response is required.

6 **SECOND CLAIM FOR RELIEF**

7 29. The United States incorporates by reference its responses to
8 Paragraphs 1 through 28 above.

9 30. The allegations in Paragraph 30 of the Third-Party Complaint consist
10 of conclusions of law to which no response is required. To the extent any of these
11 allegations could be deemed allegations of fact against the United States, the United
12 States denies those allegations.

13 31. The allegations in Paragraph 31 of the Third-Party Complaint consist
14 of conclusions of law to which no response is required. To the extent any of these
15 allegations could be deemed allegations of fact against the United States, the United
16 States denies those allegations.

17 32. The allegations in Paragraph 32 of the Third-Party Complaint purport
18 to characterize claims asserted against PSI by another party and consist of
19 conclusions of law to which no response is required. To the extent any of these
20 allegations could be deemed allegations of fact against the United States, the United
21 States denies those allegations.

22 **THIRD CLAIM FOR RELIEF**

23 33. The United States incorporates by reference its responses to
24 Paragraphs 1 through 32 above.

25 34. The allegations in Paragraph 34 of the Third-Party Complaint consist
26 of conclusions of law to which no response is required. To the extent any of these
27 allegations could be deemed allegations of fact against the United States, the United
28 States denies those allegations.

1 35. The allegations in Paragraph 35 of the Third-Party Complaint consist
2 of conclusions of law to which no response is required. To the extent any of these
3 allegations could be deemed allegations of fact against the United States, the United
4 States denies those allegations.

5 **FOURTH CLAIM FOR RELIEF**

6 36. The United States incorporates by reference its responses to
7 Paragraphs 1 through 35 above.

8 37 - 44. The allegations contained in Paragraphs 37 through 44 of the
9 Third-Party Complaint expressly do not apply to the United States and therefore no
10 response is required. To the extent any of these allegations could be deemed
11 allegations of fact against the United States, the United States denies those
12 allegations.

13 **FIFTH CLAIM FOR RELIEF**

14 45. The United States incorporates by reference its responses to
15 Paragraphs 1 through 44 above.

16 46 - 47. The allegations contained in Paragraphs 46 and 47 of the Third-
17 Party Complaint expressly do not apply to the United States and therefore no
18 response is required. To the extent any of these allegations could be deemed
19 allegations of fact against the United States, the United States denies those
20 allegations.

21 **SIXTH CLAIM FOR RELIEF**

22 48. The United States incorporates by reference its responses to
23 Paragraphs 1 through 47 above.

24 49. The allegations contained in Paragraph 49 of the Third-Party
25 Complaint expressly do not apply to the United States and therefore no response is
26 required. To the extent any of these allegations could be deemed allegations of fact
27 against the United States, the United States denies those allegations.

28 //

SEVENTH CLAIM FOR RELIEF

50. The United States incorporates by reference its responses to Paragraphs 1 through 49 above.

51. The allegations in Paragraph 51 of the Third-Party Complaint purport to characterize PSI's claims and consist of conclusions of law to which no response is required. To the extent any of these allegations could be deemed allegations of fact against the United States, the United States denies those allegations.

52. The allegations in Paragraph 52 of the Third-Party Complaint consist of conclusions of law to which no response is required. To the extent any of these allegations could be deemed allegations of fact against the United States, the United States denies those allegations.

EIGHTH CLAIM FOR RELIEF

53. The United States incorporates by reference its responses to Paragraphs 1 through 52 above.

54 - 55. The allegations contained in Paragraphs 54 and 55 of the Third-Party Complaint expressly do not apply to the United States and therefore no response is required. To the extent any of these allegations could be deemed allegations of fact against the United States, the United States denies those allegations.

GENERAL DENIAL

All allegations not specifically admitted above are denied.

RELIEF REQUESTED

The United States denies that PSI is entitled to the relief it seeks vis-à-vis the United States.

DEFENSES

The United States maintains the affirmative defenses stated in Exhibit A to the Court's Order of January 20, 2010 (entered as Dkt. No. 64 in Case No. ED CV 09-01864 PSG (SSx)) and deemed pursuant to paragraph 9 of the Order.

COUNTERCLAIMS

The United States has filed a separate civil action on behalf of the United States Environmental Protection Agency ("EPA") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607, for the recovery of response costs incurred by EPA in connection with the Site, against Goodrich Corporation, Black and Decker, Inc., and its predecessors: West Coast Loading Corporation ("West Coast"), Kwikset Locks, Inc. ("Kwikset"), American Hardware Corporation ("American Hardware") and Emhart Industries, Inc.; Pyro Spectaculars, Inc.; Wong Chung Ming a/k/a/ Chung Ming Wong; Ken Thompson, Inc.; and Rialto Concrete Products. The complaint also seeks a declaratory judgment pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), that the defendants are liable for all future EPA costs of removal and remedial action not inconsistent with the National Contingency Plan, 40 C.F.R. § 300. Finally, the complaint also seeks an injunction against Goodrich; the Black and Decker predecessors and Black and Decker; and PSI under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

The subject matter of the separate action filed on behalf of EPA is the same as that in cases consolidated under *City of Colton v. American Promotional Events, Inc., et al.*, No. ED CV 09-01864 PSG (SSx). The United States will move to consolidate the case it has filed on behalf of EPA into *City of Colton v. American Promotional Events, Inc., et al.*, No. ED CV 09-01864 PSG (SSx).

The United States is filing answers to complaints of Goodrich, Emhart Industries, Inc., and Pyro Spectaculars, Inc. in the consolidated cases, and the claims in the United States' separate complaint are also intended as counterclaims on behalf of EPA against those parties. To the extent that the counterclaims on behalf of EPA need to be set forth in this answer pursuant to the Federal Rules of Civil Procedure, they are incorporated by reference.

1 The United States also relies on paragraph 4 of the Court's January 20, 2010
 2 Order, Dkt. 64, which provides that "the answer of each Party to any complaint,
 3 cross-claim, counter-claim, or third-party claim filed in the action in which they
 4 have been named shall be deemed to include cross-claims, counter-claims, and/or
 5 third-party claims for contribution under CERCLA § 113(f), 42 U.S.C. § 9613(f),
 6 and declaratory relief under CERCLA § 113(g), 42 U.S.C. § 9613(g), against all
 7 other in pro per or separately represented Parties, including any in pro per or
 8 separately represented parties brought into any of the Consolidated Actions at a
 9 later date," and paragraph 6 of the Order, which provides that the United States of
 10 America and United States Department of Defense, among others, "shall be deemed
 11 to have filed cross-claims, counter-claims, and/or third-party claims against the City
 12 of Rialto and Rialto Utility Authority (collectively referred to herein as "Rialto")
 13 under the provisions of Paragraphs 4."

14 **REQUEST FOR RELIEF**

15 WHEREFORE, having fully answered, the United States prays that judgment
 16 be entered for it, that this action against it be dismissed with prejudice, that the
 17 Court order each party to bear their own costs and fees, and that the Court grant the
 18 United States such other and further relief as may be appropriate.

19 Respectfully Submitted,

20 IGNACIA S. MORENO
 21 Assistant Attorney General
 22 Environment & Natural Resources Division

23 Dated: February 4, 2010

24 */s/ Rochelle L. Russell*
 25 MICHAEL C. AUGUSTINI
 26 ROCHELLE L. RUSSELL
 27 LESLIE M. HILL
 28 Environment & Natural Resources Division
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 U.S. Department of Justice

CERTIFICATE OF SERVICE

I certify that on February 4, 2010, a true and correct copy of the foregoing
**THIRD-PARTY DEFENDANT UNITED STATES OF AMERICA'S
ANSWER TO PYRO SPECTACULARS, INC.'S THIRD-PARTY
COMPLAINT; COUNTERCLAIMS** was served on the counsel of record and
address listed below via overnight mail and on all other counsel of record listed in
the attached service list via regular U.S. mail and by posting it directly on Lexis
Nexis File and Serve at <http://fileandserve.lexisnexis.com>, as agreed by the parties
and ordered by the Court in the Order of January 20, 2010 (entered as Dkt. No. 64
in Case No. ED CV 09-01864 PSG (SSx)).

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